



Gaming on Indian Lands and Pari-Mutuel Permitholders
HB 7129 (Select Committee on Indian Compact Review and Galvano)
HB 7145 (Select Committee on Indian Compact Review and Galvano)

- **Simply taking money for today without ensuring the best deal for Florida's future ignores our elected responsibility.**
- **We can still bring significant revenues to Florida without irreparably harming industries important to Florida's economy.**
- **The House proposals ensure that the expansion of gambling in Florida is restricted and loopholes are closed.**

House Bills (HB) 7129 and 7145 ensure that we get the best deal for Florida's future. Accepting the terms of the voided Indian Gaming Compact (Compact) as is would ignore our Constitutional responsibilities and subject Floridians to short term fixes with long term consequences.

Because the voided Compact does not carry with it the economic and job creation benefits to the extent purported, HB 7129 proposes new compact terms to be negotiated by the Governor and Tribe and is subject to future Legislative approval. Among other changes, the new terms allow the Tribe exclusivity for the operation of Class III slots outside of Miami-Dade and Broward Counties, but do not authorize the Tribe to conduct banked card games. These changes will allow for revenue sharing but modify the terms of sharing by providing for a non-variable \$100 million guaranteed minimum annual payment instead of the variable guaranteed minimum annual payments in the voided Compact.

Additionally, the State revenue share will be calculated using a flat rate of 18% of net win to determine the annual revenue share, to the extent the flat rate would exceed the guaranteed minimum annual payment. Finally, while the voided Compact excluded provisions relating to payment of state sales tax on all sales to non-tribal members, HB 7129 requires the Tribe to collect and remit sales tax on all sales to non-tribal members.

HB 7145 reduces some of the impact that the new compact provided for in HB 7129 will have on the pari-mutuel industry. Among other things the bill closes the quarter horse "loophole" by subjecting quarter horse

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permitholders to the same permit and licensure requirements as other horse racing permitholders and revises the definition of “full schedule of live racing or games” to allow for a graduated increase in racing performances at facilities.

For pari-mutuel facilities in Miami-Dade and Broward Counties, HB 7145 reduces the slot machine license fee from \$3 million to \$2 million and replaces the current tax rate on slot machines with a tax rate twice the revenue sharing rate applicable to the Tribe. A minimum payment of \$140 million will be paid for slot machine tax collections and any shortfall is assessed at the end of the year as a pro rata share on facilities licensed to operate slot machines.

The bill also modifies licensure and permit requirements for pari-mutuel facilities operating card rooms, extends daily hours of operation for card rooms from 12 hours to 24 hours, and increases the wager limits from \$5 to \$50 per bet and buy-in for no limit Texas-Hold-em from \$100 to \$1,000.

HBs 7129 and 7145 are a responsible means of reducing the negative potential economic impacts associated with the voided Compact, while still bringing significant, necessary revenues to Florida.

RESTRICTING THE EXPANSION OF GAMBLING

HB 7145 dramatically limits gambling in Florida by limiting quarter horse permits to the same mileage restrictions that apply to other horse and dog racing permits. The practical effect would be to cut off any further quarter horse permits. Additionally, the bill requires the quarter horse permit-holder to obtain a license to run a full schedule of live racing before obtaining a card room license and must conduct a full schedule of live racing before obtaining an intertrack permit. These provisions, along with the limited exclusivity provisions of the Compact, ensure that prospective gaming activity in Florida is significantly limited.

BACKGROUND OF COMPACT

On November 14, 2007, Governor Charlie Crist and the Seminole Indian Tribe (Tribe) executed the Compact between the State and the Tribe. The Compact had been negotiated in private, with no input from or approval of the Legislature. The Compact made a number of policy decisions on behalf of the state, including the decision to allow the Tribe to offer banked card games, without regard to existing public policy such as criminal laws that prohibit the use of banked card games in Florida.

Thereafter, the Florida House of Representatives, through former Speaker Marco Rubio, filed a Petition for Writ of Quo Warranto in the Florida Supreme Court disputing the Governor’s authority to bind the State to the Compact. On July 3, 2008, the Florida Supreme Court invalidated the Compact, finding that the Governor had exceeded his authority by executing the Compact absent Legislative approval.¹

Although voided, Florida’s Compact with the Tribe was negotiated pursuant to the Indian Gaming Regulatory Act (IGRA), codified at 25 USCA §§2701-2721, which provides for “a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between the tribes and States for regulation of class III gaming.” Class III games are any games that are not Class I (generally social games for prizes of minimal value) or Class II games (bingo or card games that are explicitly authorized or not

¹ *Florida House of Representatives v. Crist*, 990 So.2d 1035 (Fla. 2008).

explicitly prohibited by state law), and include slot machines and banked card games such as blackjack (21), baccarat and chemin de fer.²

Federal law allows Tribes to offer Class III games when certain specified conditions are met, which include whether the games are conducted in conformity with a tribal compact between a state and Tribe that is in effect.³ If a Tribe wishes to engage in Class III games, then federal law dictates that the Tribe must request the state to enter into negotiations to establish a compact.⁴ Contrary to popular belief, the state's obligation under such request is to negotiate with the Tribe in good faith.⁵ There is no requirement that the state and Tribe reach an agreement on, or ultimately enter into, a compact.

If a compact is executed, then a proposed compact is submitted to the Department of Interior for approval. The Secretary of the Department has 45 days to approve or disapprove the compact, and a compact will be considered approved if the Secretary fails to act within the 45 day period.⁶ A compact becomes effective once approval of the Secretary of Interior is published in the Federal Register.⁷ If the compact has not been validly "entered into" by the state and Tribe, then it cannot be put "into effect" because it was improperly entered into, even if the Secretary of Interior published the compact in the Federal Register.⁸ In Florida's case, because the Compact was voided by the Florida Supreme Court due to the Governor's lack of authority to bind the state to the terms of the Compact, the Compact was not "validly entered into" and cannot be put "into effect."

The voided Compact is for a duration of twenty-five (25) years or revenue cycles and in the first three years, guarantees minimum payments as follows: \$100 million for the first year, paid in an initial, immediate payment of \$50 million, followed by the payment of the remaining \$50 million in equal monthly installments during the first and second revenue cycles; \$125 million in equal monthly installments in the second revenue cycle, in addition to the carry-over payments from the first year; \$150 million for the third revenue cycle, unless using the percentage rates applicable for calculating revenue sharing in the third or later years under the Compact would yield a greater amount to the State. After the third revenue cycle, the guaranteed minimum payment is set at \$100 million per revenue cycle for the remaining duration of the Compact.

Unless the guaranteed minimum in the third year and beyond are greater, the State's revenue share is calculated by applying a graduated rate to the Tribe's "net win" as follows:

- 1) 10% of amounts up to \$2 billion;
- 2) 12% of the amount between more than \$2 billion and up to \$2.5 billion;
- 3) 15% of the amount between more than \$2.5 billion and up to \$3 billion;
- 4) 20% of the amount between more than \$3 billion and up to \$4 billion;
- 5) 22.5% of the amount between more than \$4 billion and up to \$4.5 billion;
- 6) 25% of the amount that is more than \$4.5 billion.

² 25 U.S.C. 2703

³ 25 U.S.C. 2710(d)(1)

⁴ 25 U.S.C. 2710(d)(3)(A)

⁵ *Id.*

⁶ 25 U.S.C. 2710(d)(8)(C)

⁷ 25 U.S.C. 2710(d)(3)(B)

⁸ See *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, (10th Cir. 1997), cert. denied, 522 U.S. 807 (1997).

Even though the Compact was voided, the Tribe began offering Class III slots and banked card games at several of its facilities in Florida during the pendency of the lawsuit and continues to offer those games. Additionally, the Tribe has been making revenue sharing payments to the state consistent with their position that the now-voided Compact is still valid. To date, the Tribe has paid \$100 million to the State.

BACKGROUND OF PARI-MUTUEL FACILITIES

Florida has 27 licensed pari-mutuel facilities located throughout 19 counties in the state, including 16 greyhound racing tracks, 3 thoroughbred racing tracks, 1 harness racing track, 6 jai alai frontons⁹ and 1 facility permitted to conduct limited intertrack wagering.¹⁰ At this time, there are 9 quarter horse permitholders, none of whom hold a license to race quarter horses. 21 of Florida's pari-mutuel facilities operate card rooms.

For pari-mutuel activities, the State maintains a permit-license structure. If an individual or entity desires to conduct pari-mutuel operations, then they must first apply for a permit to conduct such activities. Once a permit has been obtained, the permit holder must annually apply for a license to conduct the pari-mutuel activities for which they are permitted, setting forth the number, dates and starting times of all pari-mutuel performances.

CURRENT LAW

a. Card Rooms

Card rooms are limited to operating for 12 hours a day and wagers are limited to a \$5 maximum wager with a maximum of three raises in any round of betting. Card rooms may also offer no-limit Texas Hold-em so long as the buy in is no more than \$100. When tournaments are held, they are subject to the same wager and buy-in limitations.

b. Quarter Horse Racing

Quarter horse racing is treated differently than other forms of pari-mutuel horse racing operations in Florida. Quarter horse operations are exempt from such requirements as application procedures, limitations on changes in ownership, assignment or transfer of the permit, and applicants need not provide the level of specificity related to financial information and business plans that must be provided to the state. Moreover, new permits do not have to be approved by referendum if the facility is located in a county that has already approved another pari-mutuel permit. Additionally, once a quarter horse permit is granted, the permit-holder may obtain a license to operate a card room after filing to run only one race a year.

c. Class III Slots

In 2004, Florida's voters approved an initiative petition that amended the Florida Constitution to allow for class III slots at pari-mutuel facilities in Miami-Dade and Broward Counties subject to a final county-level vote

⁹ Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering website:
<http://www.myflorida.com/dbpr/pmw/index.html>.

¹⁰ s. 550.6308, F.S.

of approval in each county.¹¹ In 2005, Broward County voters approved slots for their county, granting the right to offer Class III slots at 4 facilities. Miami-Dade voters initially rejected slots in 2005; however, in 2008 the question was again placed before Miami-Dade voters and was approved. Thus, a total of 7 facilities are eligible to offer slot machines in Miami-Dade and Broward Counties. Only 3 facilities in Broward County are currently licensed to operate Class III slot machines, none of the Miami-Dade facilities are currently licensed.

A slot machine licensee pays a license fee of \$3 million and a tax rate of 50% on slot machine revenue, which is the total cash and property, except nonredeemable credits, received by the slot machine licensee less cash, cash equivalents, credits and prizes paid to winners.

THE SELECT COMMITTEE ON SEMINOLE INDIAN COMPACT REVIEW

Because the Legislature was not a party to the Compact negotiations, and in response to the Florida Supreme Court's opinion invalidating the Compact, the Speaker created the House Select Committee on Seminole Indian Compact Review to study the provisions of the Compact and the Compact's alleged benefits to Florida's economy and job market,¹² and to explore the State's options to enter into a future compact that carries with it the benefits of revenue sharing from the Tribe without falling prey to short-term fixes with long-term consequences for Floridians.

Through the great efforts of the Select Committee, we learned that, contrary to statements about the benefits the Compact negotiated by the Governor and Tribe will provide to the State, the Compact leaves much to be desired. The positive economic benefits to the state claimed by the Tribe – 45,000 jobs, \$4.5 billion economic impact and \$288 million for next year's budget¹³ – do not include the negative impacts to other sectors of our economy. While the Tribe has claimed that the voided Compact will create 45,000 "new jobs" in the state, this figure is premised on the assumption that "new jobs" to the Tribe are "new jobs" to the State. In fact, many of these positions may be filled by Florida workers who leave current employment to work for the Tribe or the like.

The Select Committee unveiled that Florida's resort and convention industry would lose almost \$100 million as a result of the Tribe's hotel expansion activities. This would likely occur as a result of direct competition between the existing resorts and convention facilities and expanded facilities contemplated by the Tribe should they receive authorization for table gaming under the voided Compact.

We also learned that revenues from pari-mutuel operations and sales tax collections that are anticipated by the expansion of the Tribe's gaming activities could decline as much as \$6 million. Sales tax applies to non-Tribe operated facilities, such as restaurants and lodging and entertainment and retail facilities; however, due to tribal immunity, Florida does not collect sales tax from Tribe-run facilities. Thus, if the voided Compact stands, taxable convention and leisure-related business will likely shift from Florida's resort and convention industry to non-taxable expanded Tribe facilities. Furthermore, the Tribe and its solely owned entities

¹¹ Art. X, s. 23, Fla.Const.

¹² The voided Compact includes language providing that the Compact would generally benefit Florida "by increased tourism, increased local spending, job growth, and related economic development opportunities."

¹³ *Seminole Tribe Foresees 45,000 Jobs in New Deal*, The Tampa Tribune, February 2, 2009, <http://www2.tbo.com/content/2009/feb/02/021909/seminole-tribe-foresees-45000-jobs-new-deal/>

purchase resale and other items on a sales-tax exempt basis, creating an even greater competitive disadvantage for Florida's resort and convention industry.

Another common misconception instigated by public relations campaigns in favor of the voided Compact is that the Tribe is only permitted to revenue share if they get additional games like blackjack. In truth, revenue sharing is permitted where the state conveys an economic benefit on the Tribe. This benefit can take any form, including geographic exclusivity or exclusivity in types of games provided. In fact, the voided compact provided both exclusivity of types of games and geographic exclusivity as a basis for the revenue sharing. Providing the tribe with the exclusive right for slots outside of South Florida conveys a valuable economic benefit to the Tribe and justifies a comparable revenue sharing agreement between the Tribe and Florida.

HBs 7129 and 7145 ensure the best deal for Florida's future. Passage of these bills will bring significant revenues to Florida without adversely affecting other industries important to Florida's economic well being.